

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
CLERKS OFFICE
2005 MAR -4 A 11:45

ROBIN LISA STEWART

Plaintiff,

v.

ELI LILLY AND COMPANY,

and

BRISTOL-MYERS SQUIBB COMPANY,
a successor of E.R. SQUIBB & SONS, INC.,

and

PREMO PHARMACEUTICAL
LABORATORIES, INC.,

and

PHARMACIA, UPJOHN COMPANY, INC.
(aka THE UPJOHN COMPANY),

and

DART INDUSTRIES, INC., a successor to
REXALL DRUG COMPANY, INC.,

and

WYETH, INC.

Defendants.

05

10409 WGY

RECEIPT # 62508
AMOUNT \$ 250
SUMMONS ISSUED N/A
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. CLK. FDW
DATE 3/4/05

CIVIL ACTION No.

MAGISTRATE JUDGE MBB

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §1446, defendant Eli Lilly and Company ("Lilly") files this Notice of Removal and states:

1. On December 30, 2004, Plaintiff Robin Lisa Stewart ("Plaintiff") commenced an action against Lilly, Bristol-Myers Squibb, Premo, Pharmacia and Upjohn, Dart, and Wyeth (collectively, "Defendants") in the Superior Court Department of the Trial Court for the

Commonwealth of Massachusetts as Civil Action No. 04-02231 (the "Superior Court action"), by filing a Complaint for Damages. The United States District Court for the District of Massachusetts is the district embracing the place where this action is pending. Certified copies of all records and proceedings in the Superior Court action, including the Notice to the Superior Court of Removal, and a certified copy of all docket entries in the Superior Court action will be filed within 30 days pursuant to Local Rule 81.1. A copy of Defendant Lilly's Answer is attached hereto as Exhibit A and specifically incorporated herein.

2. Lilly received service of process on February 9, 2005. Upon information and belief, Defendant Bristol-Myers Squibb received service of process on February 14, 2005. Upon information and belief, Defendant Premo received service of process on February 8, 2005. Upon information and belief, Defendant Pharmacia and Upjohn received service of process on February 10, 2005. Upon information and belief, Defendant Dart has not been served. Upon information and belief, Defendant Wyeth received service of process on February 8, 2005.

3. This Notice of Removal is filed within thirty (30) days of the first date in which any defendant to this action was served with a summons and copy of the Complaint. Consequently, this notice is timely under 28 U.S.C. §1446(b).

4. Based on the information contained in the Complaint, Plaintiff was at the time of the commencement of this action, and is at the time of filing this Notice of Removal, a resident of the Commonwealth of Massachusetts.

5. Lilly was at the time of the commencement of this action and is now at the time of filing this Notice of Removal an Indiana corporation with its principal place of business in the State of Indiana.

6. Upon information and belief, Defendant Bristol-Myers Squibb was at the time of the commencement of this action and is now at the time of filing this Notice of Removal a Delaware corporation with its principal place of business in the State of New York.

7. Upon information and belief, Defendant Premo was at the time of the commencement of this action and is now at the time of filing this Notice of Removal a New Jersey corporation with its principal place of business in the State of Connecticut.

8. Upon information and belief, Defendant Pharmacia and Upjohn was at the time of the commencement of this action and is now at the time of filing this Notice of Removal a Delaware corporation with its principal place of business in the State of Michigan.

9. Upon information and belief, Defendant Dart was at the time of the commencement of this action and is now at the time of filing this Notice of Removal a Delaware corporation with its principal place of business in the State of Florida.

10. Upon information and belief, Defendant Wyeth was at the time of the commencement of this action and is now at the time of filing this Notice of Removal a Delaware corporation with its principal place of business in New Jersey.

11. Plaintiff's specified claim of damages on her Civil Action Cover Sheet is for \$50,000; however, Plaintiff's unspecified damages spelled out in her Complaint, including physical injuries to her reproductive system and resultant emotional injuries, indicate that she expects to recover well over \$75,000. Accordingly, the amount in controversy in the state action exceeds the sum or value of \$75,000, exclusive of interest and costs. *See Chin v. Holiday Cruises II, Inc.*, 141 FRD 367, 370 (D.Mass. 1992) (looking to plaintiff's unspecified damages in the Complaint over the specified amount in the Massachusetts Superior Court Civil Action Cover Sheet to determine amount in controversy for removal purposes).

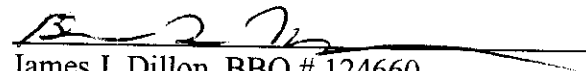
12. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1332, and the action is one that may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441(b) because it is a civil action between citizens of different states in which the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

13. Removal of this case on the basis of diversity of citizenship is not precluded by the provisions of 28 U.S.C. § 1441(b) because no Defendant is a citizen of the Commonwealth of Massachusetts.

14. All defendants who have been served consent to the removal of this action. Copies of removal consent forms for defendants Bristol-Myers Squibb, Premo, Pharmacia and Upjohn, and Wyeth are attached as Exhibit B.

Respectfully submitted,

ELI LILLY AND COMPANY


James J. Dillon, BBO # 124660
Brian L. Henninger, BBO # 657926
Foley Hoag LLP
155 Seaport Boulevard
World Trade Center West
Boston, MA 02210-2600
(617) 832-1000

Dated: March 4, 2005

EXHIBIT A

2/25/05
RECEIVED & FILED
CLERK OF THE COURTS
NORFOLK COUNTY
3/2/05

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

NORFOLK, ss

ROBIN LISA STEWART,

Plaintiff,

v.

ELI LILLY AND COMPANY, *et al.*

Defendants.

SUPERIOR COURT DEPARTMENT

CIVIL ACTION No. 04-02231

DEFENDANT ELI LILLY AND COMPANY'S
ANSWER TO THE COMPLAINT

Defendant Eli Lilly and Company ("Lilly"), by its undersigned attorneys, answers the Complaint filed in this action as follows:

FIRST DEFENSE

Answers to each paragraph of the Complaint by Lilly are made without waiving, but expressly reserving all rights that Lilly may have to seek relief by appropriate motions directed to the allegations of the Complaint.

1. Lilly is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint. To the extent a response is required, however, Lilly denies the allegations contained in Paragraph 1 of the Complaint.

2. Lilly states that it did sell and distribute diethylstilbestrol in Massachusetts. Lilly responds that the term "DES" includes many drug products including but not limited to diethylstilbestrol, and any admissions in this Answer are intended to refer only to diethylstilbestrol as it relates to Lilly. Lilly also states that it is doing business in Massachusetts and that the FDA approved Lilly's sales of diethylstilbestrol and declared that the drug was

generally recognized as safe by experts in the field for the uses at issue here. Except as already stated, Lilly denies the allegations contained in Paragraph 2 of the Complaint.

3. Lilly is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint. To the extent a response is required, however, Lilly denies the allegations contained in Paragraph 3 of the Complaint.

4. Lilly is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint. To the extent a response is required, however, Lilly denies the allegations contained in Paragraph 4 of the Complaint.

5. Lilly is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint. To the extent a response is required, however, Lilly denies the allegations contained in Paragraph 5 of the Complaint.

6. Lilly is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint. To the extent a response is required, however, Lilly denies the allegations contained in Paragraph 6 of the Complaint.

7. Lilly is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Complaint. To the extent a response is required, however, Lilly denies the allegations contained in Paragraph 7 of the Complaint.

8. Lilly is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint. To the extent a response is required, however, Lilly denies the allegations contained in Paragraph 8 of the Complaint.

COUNT I
(Negligence)

9. Lilly repeats and realleges its answers contained in Paragraphs 1 through 8 above.

10. Lilly is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first two sentences of Paragraph 3. Lilly states that following FDA approval of its Supplemental New Drug Application in 1947, Lilly manufactured and sold certain dosages of diethylstilbestrol. Except as already stated, Lilly denies the allegations of Paragraph 10 of the Complaint.

11. Lilly denies the allegations contained in Paragraph 11 of the Complaint.

12. Lilly denies the allegations contained in Paragraph 12 of the Complaint.

COUNT II
(Strict Liability)

13. Lilly repeats and realleges its answers contained in Paragraphs 1 through 12 above.

14. Lilly denies the allegations contained in Paragraph 14 of the Complaint.

15. In response to the allegations contained in Paragraph 15, Lilly states that following FDA approval of its Supplemental New Drug Application in 1947, Lilly manufactured and sold certain dosages of diethylstilbestrol. Except as already stated, Lilly denies the allegations of Paragraph 15 of the Complaint.

16. Lilly is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16. To the extent a response is required, however, Lilly denies the allegations contained in Paragraph 16 of the Complaint.

17. Lilly denies the allegations contained in Paragraph 17 of the Complaint.

18. Lilly denies the allegations contained in Paragraph 18 of the Complaint.

19. Lilly denies the allegations contained in Paragraph 19 of the Complaint.

20. Lilly denies the allegations contained in Paragraph 20 of the Complaint.

21. Lilly denies the allegations contained in Paragraph 21 of the Complaint.

COUNT III

(Breach of Warranty)

22. Lilly repeats and realleges its answers contained in Paragraphs 1 through 21 above.

23. Lilly denies the allegations contained in Paragraph 23 as stated, but admits that following FDA approval of its Supplemental New Drug Application in 1947, Lilly manufactured and sold certain dosages of diethylstilbestrol for treatment of certain accidents of pregnancy as referenced in its product literature.

24. Lilly denies the allegations contained in Paragraph 24 of the Complaint.

25. Lilly denies the allegations contained in Paragraph 25 of the Complaint.

26. Lilly denies the allegations contained in Paragraph 26 of the Complaint.

COUNT IV
(Misrepresentation)

27. Lilly repeats and realleges its answers contained in Paragraphs 1 through 26 above.

28. Lilly denies the allegations contained in Paragraph 28 as stated, but admits that following FDA approval of its Supplemental New Drug Application in 1947, Lilly manufactured and sold certain dosages of diethylstilbestrol for treatment of certain accidents of pregnancy as referenced in its product literature.

29. Lilly denies the allegations contained in Paragraph 29 of the Complaint.

30. Lilly denies the allegations contained in Paragraph 30 of the Complaint.

31. Lilly denies the allegations contained in Paragraph 31 of the Complaint.

32. Lilly denies the allegations contained in Paragraph 32 of the Complaint.

SECOND DEFENSE

The Complaint fails to state a claim upon which relief can be granted against Lilly.

THIRD DEFENSE

The Plaintiff's claims are barred by the applicable statute of limitations or laches.

FOURTH DEFENSE

If Plaintiff sustained injuries or incurred expenses as alleged, the risks complained of by Plaintiff were not discoverable using prevailing research and scientific techniques under the then-existing state of the art and were not discoverable using procedures required by federal and state regulatory authorities charged with supervision or licensing of the product as of the time Lilly sold or otherwise parted with possession and control of the product in question.

FIFTH DEFENSE

If Plaintiff sustained injuries or incurred expenses as alleged, Plaintiff's claims may be barred by virtue of the intervention of a learned intermediary or intermediaries to whom defendant discharged any duty to warn.

SIXTH DEFENSE

This court lacks personal jurisdiction over Lilly.

SEVENTH DEFENSE

Venue is improper in this judicial district.

EIGHTH DEFENSE

Plaintiff's claims are barred and preempted by Lilly's compliance with the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 et seq. and/or the regulations promulgated pursuant to that Act.

NINTH DEFENSE

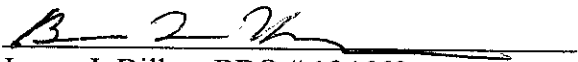
Lilly hereby gives notice that it intends to rely upon other and further defenses as may become available or apparent during discovery proceedings in this case, and hereby reserves the right to amend its Answer to assert any such defense.

DEMAND FOR JURY TRIAL

The answering defendant requests a trial by jury.

Respectfully submitted,

ELI LILLY AND COMPANY


James J. Dillon, BBO # 124660
Brian L. Henninger, BBO # 657926
Foley Hoag LLP
155 Seaport Boulevard
World Trade Center West
Boston, MA 02210-2600
(617) 832-1000

Dated: February 24, 2005

CERTIFICATE OF SERVICE

I certify that on February 24, 2005, a true copy of Defendant Eli Lilly's Answer To The Complaint was served by U.S. First Class Mail, postage prepaid, upon:

Kenneth M. Levine, Esq.
Sheila E. Mone, Esq.
Kenneth M. Levine & Associates
370 Washington Street
Brookline, MA 02446
Attorneys for Plaintiff

Aaron M. Levine, Esq.
Aaron M. Levine & Associates, P.A.
1320 Nineteenth Street, N.W.
Suite 500
Washington, DC 20036
Attorneys for Plaintiff

Sydney G. Leech, Esq.
Goodell, DeVries, Leech & Dann, LLP
One South Street
20th Floor
Baltimore, MD 21202
Attorneys for Bristol-Myers Squibb Company

Julie M. Wade, Esq.
Jodi B. Buske, Esq.
Goodwin Procter LLP
Exchange Place
Boston, Massachusetts 02109-2881
Attorneys for Premo Pharmaceutical Laboratories, Inc.

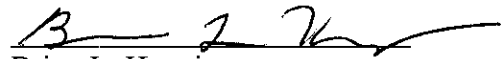
Christopher J. Garvey, Esq.
Melanie H. Muhlstock, Esq.
Goodwin Procter LLP
599 Lexington Avenue
New York, New York 10022
Of Counsel for Premo Pharmaceutical Laboratories Inc.

Marc Laredo, Esq.
Laredo & Smith LLP
15 Broad Street
Suite 600
Boston, MA 02109
Attorneys for Pharmacia & Upjohn Company LLC

Stephanie Albert, Esq.
Heidi Hilgendorff, Esq.
Drinker Biddle & Reath
1500 K Street, N.W., Suite 1100
Washington, DC 20005-1209
Attorneys for Pharmacia & Upjohn Company LLC

John Anderson, Esq.
Troutman Sanders LLP
1660 International Drive
Suite 600, Tysons Center
McLean, VA 22102
Attorneys for Dart Industries, Inc.

Janice W. Howe, Esq.
Bingham McCutcheon LLP
150 Federal Street
Boston, MA 02110-1726
Attorneys for Wyeth, Inc.


Brian L. Henninger

RECEIVED & FILED
CLERK OF THE COURTS
NORFOLK COUNTY
3/4/05

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

SUPERIOR COURT DEPARTMENT

NORFOLK, ss

ROBIN LISA STEWART,
Plaintiff,

v.

ELI LILLY AND COMPANY, *et al.*
Defendants.

CIVIL ACTION No. 04-02231

DEFENDANT ELI LILLY AND COMPANY'S
CORPORATE DISCLOSURE STATEMENT

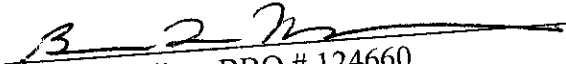
I, the undersigned, counsel of record for Defendant Eli Lilly and Company, certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries, or affiliates of Eli Lilly and Company which have any outstanding securities in the hands of the public.

Lilly Del Mar, Inc., a British Virgin Islands Corporation

These representations are made in order that judges of this Court may determine the need for recusal.

Respectfully submitted,

ELI LILLY AND COMPANY


James J. Dillon, BBO # 124660
Brian L. Henninger, BBO # 657926
Foley Hoag LLP
155 Seaport Boulevard
World Trade Center West
Boston, MA 02210-2600
(617) 832-1000

Dated: February 24, 2005

CERTIFICATE OF SERVICE

I certify that on February 24, 2005, a true copy of the foregoing document was served by U.S. First Class Mail, postage prepaid, upon:

Kenneth M. Levine, Esq.
Sheila E. Mone, Esq.
Kenneth M. Levine & Associates
370 Washington Street
Brookline, MA 02446
Attorneys for Plaintiff

Aaron M. Levine, Esq.
Aaron M. Levine & Associates, P.A.
1320 Nineteenth Street, N.W.
Suite 500
Washington, DC 20036
Attorneys for Plaintiff

Sidney G. Leech, Esq.
Goodell, DeVries, Leech & Dann, LLP
One South Street
20th Floor
Baltimore, MD 21202
Attorneys for Bristol-Myers Squibb Company

Julie M. Wade, Esq.
Jodi B. Buske, Esq.
Goodwin Procter LLP
Exchange Place
Boston, Massachusetts 02109-2881
Attorneys for Premo Pharmaceutical Laboratories, Inc.

Christopher J. Garvey, Esq.
Melanie H. Muhlstock, Esq.
Goodwin Procter LLP
599 Lexington Avenue
New York, New York 10022
Of Counsel for Premo Pharmaceutical Laboratories Inc.

Marc Laredo, Esq.
Laredo & Smith LLP
15 Broad Street
Suite 600
Boston, MA 02109
Attorneys for Pharmacia & Upjohn Company LLC

Stephanie Albert, Esq.
Heidi Hilgendorff, Esq.
Drinker Biddle & Reath
1500 K Street, N.W., Suite 1100
Washington, DC 20005-1209
Attorneys for Pharmacia & Upjohn Company LLC

John Anderson, Esq.
Troutman Sanders LLP
1660 International Drive
Suite 600, Tysons Center
McLean, VA 22102
Attorneys for Dart Industries, Inc.

Janice W. Howe, Esq.
Bingham McCutcheon LLP
150 Federal Street
Boston, MA 02110-1726
Attorneys for Wyeth, Inc.



Brian L. Henninger

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBIN LISA STEWART,

Plaintiff,

v.

ELI LILLY AND COMPANY, *et al.*

Defendants.

CIVIL ACTION No.

CONSENT TO REMOVAL

Bristol-Myers Squibb, acting through its attorneys, Barry Gerstman and Sedgwick, Detert, Moran & Arnold LLP, hereby consents to the removal of the above-captioned case from the Superior Court of the Commonwealth of Massachusetts to the United States District Court for the District of Massachusetts.

 /B/t

Barry Gerstman

Sedgwick, Detert, Moran & Arnold LLP

125 Broad Street, 39th Floor

New York, NY 10004-2400

(212) 422-0202

Attorneys for Defendant Bristol-Myers
Squibb

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBIN LISA STEWART,

Plaintiff,

v.

ELI LILLY AND COMPANY, *et al.*

Defendants.

CIVIL ACTION No.

CONSENT TO REMOVAL

Premo Pharmaceutical Laboratories, Inc., acting through its attorneys, Julie M. Wade, Jodi B. Buske, Christopher J. Garvey, Melanie H. Muhlstock, and Goodwin Procter LLP, hereby consents to the removal of the above-captioned case from the Superior Court of the Commonwealth of Massachusetts to the United States District Court for the District of Massachusetts.

Julie M. Wade / B.B.
Julie M. Wade, BBO #653902
Jodi B. Buske, BBO # 657990
GOODWIN PROCTER LLP
Exchange Place
Boston, Massachusetts 02109-2881
(617) 570-1000

Of Counsel:
GOODWIN PROCTER LLP
Christopher J. Garvey
Melanie H. Muhlstock
599 Lexington Avenue
New York, New York 10022

Attorneys for Defendant, Premo
Pharmaceutical Laboratories, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBIN LISA STEWART,

Plaintiff,

v.

ELI LILLY AND COMPANY, *et al.*

Defendants.

CIVIL ACTION No.

CONSENT TO REMOVAL

Pharmacia & Upjohn LLC, acting through its attorneys, Marc Laredo and Laredo & Smith LLP, hereby consents to the removal of the above-captioned case from the Superior Court of the Commonwealth of Massachusetts to the United States District Court for the District of Massachusetts.

Marc Laredo / BLH

Marc Laredo, BBO # 543973

Laredo & Smith LLP

15 Broad Street, Suite 600

Boston, MA 02109-3805

(617) 367-7984

Attorneys for Defendant, Pharmacia &
Upjohn LLC

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBIN LISA STEWART,

Plaintiff,

v.

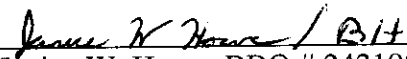
ELI LILLY AND COMPANY, *et al.*

Defendants.

CIVIL ACTION No.

CONSENT TO REMOVAL

Wyeth, Inc., acting through its attorneys, Janice W. Howe and Bingham McCutcheon LLP, hereby consents to the removal of the above-captioned case from the Superior Court of the Commonwealth of Massachusetts to the United States District Court for the District of Massachusetts.


Janice W. Howe, BBO # 242190
Bingham McCutchen LLP
150 Federal Street
Boston, MA 02110
(617) 951-8000

Attorneys for Defendant Wyeth, Inc.

CERTIFICATE OF SERVICE

I certify that on March 4, 2005, a true copy of the foregoing Notice of Removal was served by U.S. First Class Mail, postage prepaid, upon:

Kenneth M. Levine, Esq.
Sheila E. Mone, Esq.
Kenneth M. Levine & Associates
370 Washington Street
Brookline, MA 02446
Attorneys for Plaintiff

Aaron M. Levine, Esq.
Aaron M. Levine & Associates, P.A.
1320 Nineteenth Street, N.W.
Suite 500
Washington, DC 20036
Attorneys for Plaintiff

Barry Gerstman, Esq.
Sedgwick, Detert, Moran & Arnold LLP
125 Broad Street, 39th Floor
New York, NY 10004-2400
Attorneys for Bristol-Myers Squibb Company

Julie M. Wade, Esq.
Jodi B. Buske, Esq.
Goodwin Procter LLP
Exchange Place
Boston, Massachusetts 02109-2881
Attorneys for Premo Pharmaceutical Laboratories, Inc.

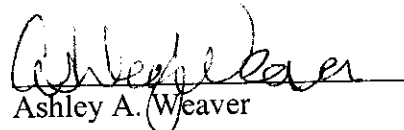
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599 Lexington Avenue
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Marc Laredo, Esq.
Laredo & Smith LLP
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Attorneys for Pharmacia & Upjohn Company LLC

Heidi Hilgendorff, Esq.
Drinker Biddle & Reath
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Florham Park, NJ 07932-1047
Attorneys for Pharmacia & Upjohn Company LLC

Sheila A. Moeller, Esq.
Gilbride, Tusa, Last & Spellane LLC
708 Third Avenue
26th Floor
New York, NY 10017
Attorneys for Dart Industries, Inc.

Janice W. Howe, Esq.
Bingham McCutcheon LLP
150 Federal Street
Boston, MA 02110-1726
Attorneys for Wyeth, Inc.


Ashley A. Weaver

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Stewart v. Eli Lilly
and Co. et al.
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).
- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ✓ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.
3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.
4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?
- YES ☐ NO ☒
5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)
- YES ☐ NO ☒
- IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?
- YES ☐ NO ☒
6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?
- YES ☐ NO ☒
7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).
- YES ☒ NO ☐
- A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?
- EASTERN DIVISION ☒ CENTRAL DIVISION ☒ WESTERN DIVISION ☐
- B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?
- EASTERN DIVISION ☐ CENTRAL DIVISION ☐ WESTERN DIVISION ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME JAMES J. DILLON, FOLEY HOAG LLPADDRESS 155 SEAPORT BLVD BOSTON, MA 02210TELEPHONE NO. 617-832-1000

(Cover sheet local.wpd - 11/27/00)

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

Worcester

(c) Attorney's (Firm Name, Address, and Telephone Number)

617-576-2700
Kenneth M. Levine & Associates
330 Washington St.
Boston, MA 02110

DEFENDANTS

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

Marion

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Foley LLP
155 Seaport Blvd
Boston, MA 02210
617-832-1300

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---|--------------------------------|---|--------------------------------|---------------------------------------|
| Citizen of This State | PTF <input checked="" type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

- (Place an "X" in One Box Only)
- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC 1446

Brief description of cause:

Negligence, Strict Liability, Breach of Warranty, Misrepresentation

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

March 1, 2005

SIGNATURE OF ATTORNEY OF RECORD

Sam J. Dell

BBO #124660

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE